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HOUSE..... .....No. 149.

REPORT

OF A

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JOINT SPECIAL COMMITTEE,

ON

CAPITAL PUNISHMENT.

Dep. of Doc. in *6456a.50

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, January 22, 1851.

ORDERED, That Messrs. MASON, of Fitchburg,
GOULD, of Ware,
POND, of Boston,
GREGORY, of Seekonk, and
LAMSON, of Shelburne,

With such as the Senate may join, be a committee to consider and report whether the infliction of death as a punishment for crimes, may not, consistently with the public welfare, be dispensed with.

Sent up for concurrence.

LEWIS JOSSELYN, *Clerk.*

IN SENATE, January 25, 1851.

Concurred, and Messrs. REVES and HOWE are joined.

C. L. KNAPP, *Clerk.*

Anonymous.
August 28, 1906

Commonwealth of Massachusetts.

House of Representatives, April 24, 1851.

The Joint Select Committee, appointed to consider and report, whether the infliction of death, as a punishment for crimes, may not, consistently with the public welfare, be dispensed with; to whom also were referred numerous petitions of citizens of this State, praying for the entire abolition of capital punishment, and likewise the remonstrance of several individuals against any change of existing laws on the subject, have had the same under consideration and submit the following

REPORT:

The subject is one which has long engaged the earnest attention of philanthropists, and has, of late, excited some interest among legislators. Within the last twenty years, it has been repeatedly brought before the Legislature of this Commonwealth. In 1831, a committee of five members of the House of Representatives, was appointed to consider whether any alterations were necessary or expedient, in the penal code of the State, in cases wherein the punishment of death might be inflicted. That committee, of which the Hon. William Sullivan was chairman, came to the result, that for the crimes of burglary, robbery, arson and rape, the punishment of imprisonment should be substituted for death, and the same in the case of murder; but if, in respect to the last named crime, the public sentiment still demanded death, that it should be in private. At the session in January, 1832, bills designed to carry out the

principles of the report, were introduced into the House, but were all rejected.

In 1835 the subject was again brought under the consideration of the Legislature, and the Hon. Robert Rantoul, Jr., as chairman of select committees of the House, for three successive years, made elaborate and able reports, accompanied by bills for the entire abolition of the punishment of death. The measure, however, did not in either case succeed. In 1836, and again the next year, the subject was referred, in the Senate, to committees of that body, who, in both instances, made reports in vindication of capital punishment.

In 1839, a bill, which originated in the House, abolishing the punishment of death for the crimes of burglary and highway robbery, passed both branches and became a law. Since that time, the subject has been brought to the notice of the Legislature, every year, by petitions, and in several instances by executive recommendation, and has been repeatedly referred to select committees, either joint, or of the House.

During the period above named, bills abolishing capital punishment, in certain cases, have, from time to time, passed one branch of the Legislature, but have failed in the other. As the law now stands, the crimes of arson, murder, rape and treason, are punishable with death.

In the various reports upon the subject, which have been presented in the Legislature, the arguments upon both sides of the question have been fully set forth. With the exception of a brief report made by a portion of a committee in 1843, no vindication of the practice of capital punishment has been attempted by any committee, or member of a committee, since the report made by Mr. Hudson, in the Senate, in 1836. The arguments, in favor of the abolition of such punishment, which have been adduced and cogently enforced in several of the reports heretofore made, the committee believe remain unanswered and unanswerable. It will be their present purpose to set forth some of the leading considerations in the case, and to illustrate and substantiate them by the use of such facts and arguments as they have at command.

The prevalence, from antiquity, of the practice of inflicting death as a punishment, is adduced by its advocates as an argu-

ment for its continuance. But, it has been well remarked, "the history of mankind is an immense sea of errors, in which a few obscure truths may here and there be found." Other practices have obtained among the nations of the earth, which, in ages and climes more enlightened, men have not scrupled to condemn as abhorrent to the dictates of humanity and of right. "Idolatry in religion, tyranny in government, capital punishment, and inhuman tortures in jurisprudence, are coeval and coextensive." The fact that, within the last half century, in the nations of Europe, as well as in the states of this Union, capital punishment has been done away, to a greater or less extent, not only without detriment, but to the manifest benefit of society, may well lead to a distrust of the necessity of continuing the practice at all. If it has been safely and profitably dispensed with in certain cases, why may it not be in others? why not in all cases? But if it be indeed necessary, in any case, "ought we not, in these enlightened times, to know the reasons upon which the necessity is founded? Or ought we, without any meditation, to surrender ourselves to opinions formed in distant ages," and under circumstances widely different from any that exist among us?

"Life," says Sir William Blackstone, "is the immediate gift of God to man, which neither he can resign, nor can it be taken from him, unless by the command or permission of him who gave it, either *expressly revealed*, or collected from the laws of nature or society by *clear and indisputable demonstration*." Unless it can be made to appear, that an obligation or duty of some sort rests upon society, requiring a resort to the sanguinary punishment of death, undoubtedly it will be granted, by common consent, that the practice should be discarded. The question then arises, Does any such obligation or duty exist, growing out either of any positive mandate of the Almighty, or of a just and proper regard to the public safety and welfare?

Few, probably, would be willing to maintain, as an absolute and unqualified proposition, that it is the imperative duty of society, under all circumstances, to punish any species of crime with ignominious death. But an impression seems to prevail, to some extent, that this mode of punishment for certain crimes,

especially for murder, is demanded by the revealed will of God. If any such command exists, obligatory upon us, it is doubtless to be sought in the Old Testament.

The Mosaic code, considered as a system of municipal law, was delivered confessedly to the Jewish people. There is nothing indicating that it was designed for universal application or perpetual duration. No doubt it contains precepts and principles which may be applicable to all nations and all times. To allow it any other or further force, to suppose it to exist as a code of penal law, obligatory at this day, would lead to conclusions in which, it is apprehended, few would be willing to repose. Not only had nearly or quite every commandment of the Decalogue the infliction of death as a sanction, but a multitude of offences, some of them, as we should deem, of a very venial character, were punished in the same manner. But if that code was promulgated by the Almighty himself, for the government of all nations, in all ages, it must be binding as a whole, in all its provisions; nor is it at all a matter of discretion to dispense with any portion of it. No evidence can be produced to show that we are absolved from a part, but are holden for the performance of the rest.

But nobody, it is presumed, believes that the Jewish code, with its bloody catalogue of more than thirty capital offences, is still in force as law. If any of its penal provisions are entitled to observance, it must be, not that they stand as divine mandates addressed to us, but because of their adaptation to the existing state of society. Now the Jews, for whose especial use this code was designed, were a rude and uncultivated people, revengeful, "stiff-necked," and perverse, raised in fact but little above the condition of barbarism, with no means of vindicating the outraged laws of their imperfect social state, but summary chastisements or the extermination of the offender. Granting such a code to have been suitable for *Jews*, in that situation, the presumption is strong that it must be eminently unsuitable for *Christians*, in a condition almost diametrically the reverse; for a civilized, enlightened people, living in a well ordered state of society, under the benignant and merciful dispensation of the gospel, with the most ample means of restraining those who may be deemed dangerous to the public.

But the main stress of the Bible argument in support of capital punishment, is laid upon the passage in the ninth chapter of Genesis, which in our version reads, "Whoso sheddeth man's blood, by man shall his blood be shed." What is the correct translation and true exposition of this passage, may admit of a doubt. It is said, on what would seem to be competent authority, that the passage is fully as well susceptible of the translation, "*Whatsoever* sheddeth man's blood by man shall *its* blood be shed," thereby applying it to beasts, and subjecting the *beast* that had shed man's blood to be slain "*by man*," whilst for the shedding of man's blood *by his brother man*, the great lawgiver has reserved to himself the vindication, in such way as to his inscrutable wisdom may seem meet.

This explanation of the passage is consistent with the context. The object aimed at evidently is, to enforce the strict observance and respect of human life,—to inculcate the idea of its inviolability. Even the beast that had destroyed the life of a man was to be put to death. But to regard the passage as a positive mandate to slay the manslayer, would be wholly repugnant to the concluding clause of the verse, "*for in the image of God made he man.*" For if the enormity consist in this, that the image of God is marred in the person of the slain, not only will its comeliness not be restored by the destruction of the slayer, but the same calamity will, of deliberate purpose, be repeated; since he too, however unworthy, was yet alike made in the image of God.

But if the passage is to stand as it is translated, making it applicable to *persons*, there is still nothing in it necessarily mandatory. A more obvious understanding of it is, to regard it as simply a prediction of what is likely to occur; as a denunciatory warning of the fatal consequences which the shedding of blood is calculated to produce. It is but the enunciation of an admitted principle, that *like begets like;* that, as in this case, bloodshed leads to bloodshed; that the violent man falls a prey to violence,—a thing extremely liable to happen among a barbarous, fierce and revengeful people. It is the the same principle which is expressed in a similar form, in such passages as these:—"Bloody and deceitful men shall not live out half their days;" "all they that take the sword shall perish with the sword."

There are other and insuperable obstacles in the way of that exposition of the passage which makes it import an imperative command, of universal obligation. The language includes all cases of the taking of human life. It extends to manslaughter as well as to deliberate murder, to homicide, deemed by the law excusable or justifiable,—nay, to killing by a lunatic or an idiot, or through the veriest accident, no less than to either. If the passage does indeed set forth an express command of God, fairly and legitimately covering all these cases, indiscriminately, who has been empowered, who assumes the prerogative, to place a restriction upon that command, when the Omnipotent author has placed none? If the fact is made out, that such a command exists, designed for our observance, it only remains for us to yield it a full and unqualified obedience. It is not for fallible man, in such a case, to undertake to limit, or restrict, or qualify, to suit his own notions of what may be reasonable and just and humane.

Besides, as a matter of fact, wilful and deliberate murder was not the only species of homicide which, in those ancient days, was wont to meet the retribution of death. On the contrary, it was found necessary, as a mitigation of the severity of the existing practice, and a shield against the relentless spirit of vengeance, to establish "cities of refuge," wherein those who had, by accident or misadventure, slain a human being, might shelter themselves from the fury of the incensed pursuer.

Moreover, with the Jews, the infliction of death was not committed to ministers of the law, but the nearest relative of the slain was constituted the "avenger of blood." By what authority has this prerogative been taken from the hands in which it was reposed and transferred to strangers? And although the person charged with crime may have been acquitted, in due course of law, what obligation can that impose, what justification can it furnish to individuals, to forbear to execute the commandment, addressed to all mankind, if such indeed it be, which ordains that the manslayer shall by man be slain.

Furthermore, by what authority does the executive ever undertake to stay the execution of the sentence of death? By what warrant does that department presume to interfere and frustrate the declared will and law of God? If the Author of

all has issued his unchanging mandate, that the homicide shall be put to death by man's hands, what flagrant ungodliness on the part of the people to ask, what impious defiance on the part of the executive to grant, that the life even of a convicted murderer should be spared.

The truth is, no man, how intrepid an advocate soever he may deem himself to be, of what is termed the Bible doctrine in favor of capital punishment, dares assume the consequences which legitimately and necessarily flow from regarding the Jewish law, or the passage quoted from Genesis, as divine commands imposed upon all nations, designed for all ages, and therefore binding upon us. Nobody but puts limitations and restrictions upon those provisions, wholly inconsistent with the idea of their being regarded as possessing a peculiar and conclusive authority by virtue of their origin and assumed purpose.

What more preposterous than to appeal to the passage in Genesis, as a mandatory authority from God himself to punish simply what we deem wilful murder, but no other species of homicide, with death by the hands of the hangman, after having passed through all the forms and technicalities of a trial, subject also to the chances of an executive pardon. It is, in effect, to assume that the commandment was given in reference and subject to the limitations and restrictions, as to the manner of killing, the adjudication and execution of the sentence, and its incidents, embraced in the definition of *murder*, as known to the *common law of England.*

In this view of the matter, the committee have no difficulty in coming to the conclusion, as the result of this preliminary inquiry, that there is no positive precept or command in the Old Testament, and certainly it will not be pretended there is any in the New, requiring the infliction of death as a punishment for crime. They deem, indeed, that nothing is found in either, to warrant or justify the practice, in the existing state of society; but, for the present purpose, it is sufficient that there is nothing in favor of it, to preclude a free investigation of the subject upon its merits. We have, then, to consider whether the constitution of society authorizes, and its exigencies demand, the use of such a punishment.

A question naturally arises, as to the right of society to take

the life of its members as a punishment. Much has been written, beautiful and fine drawn theories have been advanced, in support of the right. Men, it is said, in entering into the social state, have formed a compact, and have consented that society, for the purpose of effectuating its objects, shall have and exercise certain rights over individuals, and that among the rights thus conceded is this right to take life. It is not easy to understand how an individual can be competent to consent that another,—be it the state or an individual,—shall exercise a right which he cannot himself exercise, and does not in fact possess.

Besides, this idea of any such social compact or agreement having ever been formed, is purely a fiction. People are born into society very much without their consent. They grow up in it because of the simple necessity that they must be somewhere, in the meantime; and, so far as this matter is concerned, they may as well remain where they are, as go elsewhere. They conform to the requirements and usages of society, not because they have agreed to do so, but chiefly from habit, coupled with a persuasion, perhaps, so far as the subject is thought of at all, that it is useful and proper so to do; and from understanding very well that they must do that or suffer worse. Government, possessing a supervisory and controlling power over the people, through the sufferance of the masses, and the consent of a majority of the few who have any actual participation in carrying it on, assumes the exercise of such prerogatives as the constituted powers permit, and adjudge to be necessary for the purpose. And if it happens to be thus determined that taking the life of a citizen, in certain prescribed cases, shall be one of those prerogatives, government, so long as it maintains the supremacy, possesses the uncontrollable, resistless sway, and will exercise that prerogative. It resolves itself very much into the right to do the thing, because it has the power, and chooses to use it. We are stating here merely how, as we conceive, the exercise of this alleged right is derived and sustained, as a matter of fact, without regard, in this connection, to the question whether such exercise be beneficial to society, or otherwise.

The right of society to take life is sometimes attempted to be deduced from the natural rights of man. It is the generally ad-

mitted doctrine, that an individual, in a state of nature, or in a situation where the laws of society, or the aid of his fellows cannot, at the moment, be brought in for his protection, may, in his own necessary self-defence, take the life of his assailant. But this he can rightfully do only when he has no other resource. If the danger have passed, or if, being imminent, he yet may retreat from it, or summon in aid to repel it, he is no longer at liberty to take the life of his fellow man.

"Society," says Mr. Livingston, in his celebrated Report on Crimes and Punishments, "has the right only to defend that which the individuals who compose it have a right to defend, or to defend itself,—that is to say, its own existence; and to destroy any individual or any other society which shall attempt its destruction. But this, as in the case of individuals, must be only while the attempt is making, and when there is no other means to defeat it. And it is in that sense only that I understand the word so often used, so often abused, so little understood, *necessity*. It exists between nations during war; or a nation and one of its component parts, in a rebellion or insurrection; and between individuals during the moment of an attempt against life, which cannot otherwise be repelled; but between society and individuals, organized as the former now is, with all the means of repression and self-defence at its command, *never*."

How far this alleged right of society to inflict death as a punishment fails of being sustained by analogy to the individual's natural right of self-defence, is forcibly shown by the following paragraph from Mr. O'Sullivan's able report to the New York legislature, in 1841. "Society," he says, "goes much further. It is not till *after* the crime, which no human power can recall or repair, that it seizes the criminal and puts him to death, for the purpose of making 'an example' of him, and of holding his execution up in view as a terror to others; a shocking sort of experimenting on human nature, as it has well been termed, to kill one man, in order to reform or confirm the virtue of another; which, in consequence of one now irretrievable evil, reproduces the same in the person of its author; seeks to repress the indulgence of cruelty, by a cruelty not less ruthless, and still more deliberate; and can only deter from the shedding

of human blood, by itself setting the example of the very act it forbids."

Were it demonstrable that the continuance of the practice of punishing with death were indispensable to the existence and safety of society, the right to exercise that high prerogative would become a practical and most important question. But as the matter actually stands, the committee regard the question of the right as purely a speculative one. They believe no such exigency can be made out,—that none in fact exists. And unless a regard for the preservation and well being of the social state imposes the necessity of taking life, they do not suppose it will be seriously claimed that society can be held justifible in resorting to that last dread infliction.

The design of punishment, it is to be feared, is not always correctly apprehended. "It is from an abuse of language," says Mr. Eden, "that we apply the word *punishment* to human institutions; vengeance belongeth not to man." The infliction of pain or suffering upon the offender, is no part of the legitimate purpose and design of punishment, as exercised by civilized society. The primary object of the state, in administering punishment, is to protect the rights of those who are placed under its supervision and guardianship. Its province is to act upon the defensive. It is to curb and restrain the act as a *crime*, not to punish it as a *sin*. It looks to the character of the offence, as tending to subvert or endanger the public safety and welfare; whilst it can take no note of the personal demerits or deserts of the offender. "The degree of sin depends on the malignity of the heart, which is impenetrable to finite beings." That, therefore, is incapable of being made the gauge by which to measure the criminality of actions.

The professed objects of inflicting punishment are, first, to prevent the repetition of the offence by the same individual; secondly, to deter others, by the example, from the commission of like offences. It is the dictate of humanity, that these objects should be accomplished in a way, which, while it shall be effectual, will be productive of the least possible injury to the offender; and, so far as may be, will be conducive to his good. For the former of the objects above named, the punishment of death is indeed effectual. But, it is submitted, the same object can be perfectly well accomplished, without resort-

ing to so terrible an expedient. In the existing state of society, with the means at command for restraining dangerous subjects, it is idle and preposterous to pretend, that the community cannot be adequately protected against danger from an isolated individual. "We have," says Mr. O'Sullivan, "but to will it, and the immured and guarded malefactor is placed as securely on our part, and as hopelessly on his, beyond every possibility of escape, as though the gate by which he passes to his place of incarceration were indeed the portal of that dark abode, over whose entrance the imagination of Dante has inscribed the terrible words, "Lasciate ogni speranza, vi o ch' intrate." "*Leave all hope behind, ye who enter here.*"

Could it be deemed necessary to strangle the convicted felon, simply for the purpose of securing society from his further assaults, why should it not be considered even more necessary to put to death the lunatic,—the monomaniac, for instance, possessed, it may be, of an insatiable passion for the destruction of human life, and fruitful in crafty expedients to gratify his insane craving. He, it should seem, if anybody, must be dangerous to the physical safety of the community. Yet the proposition to put such a one to death, on that account, would be received, as it would deserve, with universal execration.

The supposed good effects resulting from capital punishment, as an example to deter others from crime, it is apprehended, are more imaginary than real. Death, it is argued, is the most terrible of all punishments, and the best fitted to strike dread into the minds of the wicked. Death has indeed been styled the king of terrors. Yet, in the natural course of events, sooner or later, it comes to all. It is not necessarily regarded as the greatest of evils, or, in fact, as any evil at all. The conduct of men does not indicate that the dread of it is ordinarily, to any very marked extent, an operative principle with them. How often do we see individuals, from apparently trifling inducements of gain, of pleasure, or of curiosity, or from the reckless spirit of adventure, expose themselves to perils and casualties, which they are perfectly aware, are calculated to hasten the approach of death. "There is," says Bacon, "no passion in the mind of man so weak but it mates and masters the fear of death; and therefore death is no such terrible enemy, when a man hath so many attendants about him that can win the com-

bat over him. Revenge triumphs over death; love slights it; honor aspireth to it; grief flieth to it; fear preoccupieth it."

It is an important consideration, that it is not the fear of *certain* death which confronts the man who is about to perpetrate a crime. It is but adding one more to the chances of death, to which, in common with all mankind, he is already exposed. True, the law denounces death as the punishment of a given crime. But there are the chances that he may never be detected; that if detected, he may not be convicted; that if convicted, he may not be executed. These and like considerations serve to invest the idea of death with a seeming of uncertainty and remoteness, disarming it of the terror with which it might be attended, were it realized as a thing certain and imminent.

If death were indeed so terrible to the transgressor, we might expect it to be completely effectual in restraining men from the commission of offences of inferior degree. But precisely the contrary is known to be the fact. The inefficacy of this species of punishment for such offences, is admitted. Sir William Blackstone, some seventy-five years ago, stated that not fewer than *one hundred and sixty* different offences were punishable with death; and after his time the number was considerably increased. Under this accumulated mass of capital offences, the administration of criminal law virtually broke down. The punishment so freely denounced, was but rarely executed for these minor offences, and it was not until milder punishments were substitututed, that the torrent of transgression was partially stayed, and such offences became comparatively infrequent.

But if death be inadequate to deter from offences of lower grade, it certainly cannot be expected to be more effectual in preventing crimes of deeper dye. Indeed, the fear of death, it has been well observed, is peculiarly unsuited to restrain from the commission of such crimes. "Ambition," says Mr. Livingston, "which usually inspires the crime of treason, soars above the fear of death; avarice, which whispers the secret murder, creeps below it; and the brutal debasement of the passion that prompts to another atrocious crime, is proverbially blind to consequences, and regardless of obstacles that impede its gratification. Threats of death will never deter men who are actuated by these passions; many of them confront it in the very com-

mission of the offence, and therefore readily incur the lesser risk of suffering it in what they think the impossible event of detection."

Another reason why the fear of death is comparatively inoperative, is to be found in the peculiar views and notions which prevail with that class of people who are most likely to commit crimes. "The terror of example," says Elizabeth Fry, "is very generally rendered abortive by the predestinarian notion, vulgarly prevalent among thieves, that, *if they are to be hanged, they are to be hanged*, and nothing can prevent it." The obvious tendency of this is to make them reckless of consequences, until they are actually arrested in their career, and then they impute their condition to destiny or bad luck. Again, says the same authority, "capital convicts pacify their conscience with the dangerous and most fallacious notion, that the violent death which awaits them, will serve as a full atonement for all their sins." They deem that however numerous or aggravated the offences of which they may have been guilty, they shall actually purchase absolution, and entitle themselves to salvation, by suffering an ignominious punishment.

Facts abundantly show that in many cases, the fear of death is utterly impotent to restrain from the commission of crimes. Especially is the crime of murder preëminently the one, from which the denuciation of death is the least calculated to deter. This crime is not unfrequently committed, under circumstances showing conclusively, not merely that the fear of death has no operative restraining force, but even that death is actually contemplated, as the consequence of the deed, nay, courted and induced by the voluntary act of the criminal himself.

Mr. Sampson, in his treatise on the "Rationale of Crime and its appropriate treatment," says, "those who take the trouble to refer to any considerable number of cases of murder, will be struck by the remarkable fact, that the *homicidal* is almost invariably accompanied by the *suicidal* tendency; and hence that persons who are in the state of mind which renders them capable of attempting the destruction of a fellow creature, are usually, at the same time, desirous of self-destruction. In a proportion of at least two out of three cases, this peculiarity is evidenced either by the circumstance that the individual has attempted suicide previously to the perpetration of the murder;

that he has destroyed himself immediately afterwards; that he has given himself up to justice, expressing at the same time a desire to be hanged; or that, by his conduct previously to the offence, he has evinced the absence of any solicitude so to lay his plans as to enable him to escape from its consequences.

"On referring to the Annual Register," he proceeds to say, "I find, that the murders recorded therein as committed in Great Britain, during a period of five years, from 1831 to 1835 inclusive, amount to thirty-one in all. Of these, in ten cases the persons surrendered themselves to justice, expressing, in most instances, a perfect readiness, and sometimes an eager desire, to meet the fate that awaited them; in three cases the murder was followed by the immediate suicide of the culprit; in two cases suicide had been attempted previously to the perpetration of the homicide, and in five, the parties showed by their general conduct the absence of any wish to escape from the consequences of the act; thus making a total of twenty out of thirty-one cases, in which the desire for self-destruction was more or less clearly manifested."

The same author adduces memoranda of similar occurrences, which took place during the first *four months* of the year 1842, extracted from such newspapers as casually passed through his hands during that period. He enumerates ten cases of persons who had committed or attempted to commit homicides. In six of these cases, the offenders either committed or attempted suicide, and in the remaining four cases, two expressed a wish to have the punishment of death executed upon them, and two had, previously to the deed, declared their expectation of suffering for it. The conclusion to which he comes, is, that to persons laboring under the morbid feeling thus shown to be so frequently attendant upon the commission of homicide, the present sanguinary laws act chiefly as a *stimulant;* and that the only thing which would operate at all with preventive force, would be the impression that if this propensity were indulged up to the point of homicide, it would subject its possessor to a life of *perpetual* RESTRAINT.

Were the punishment of death really effectual as an example, we should expect to find the most convincing proofs of it in the effect produced by public executions. But any amount of evidence might be adduced to show the positively injurious influ-

ence of such exhibitions,—nay their direct tendency to provoke a repetition of the same crimes. "It is notorious," says Mr. Buxton, "that executions rarely take place without being the occasion on which new crimes are committed." "One of the jury that tried and convicted Dr. Dodd, was himself tried in the same court, the Old Bailey, and executed on the same gallows, Tyburn, for the same offence, forgery, within *two years* afterwards." The Rev. Mr. Roberts, of Bristol, in his visits to prisons in England, fell in with many convicts, under sentence of death. In *one hundred and sixty-seven* instances in which he inquired of the malefactor, whether he had ever witnessed an execution, it turned out that *all of them excepting three*, had been spectators in the crowd upon those melancholy occasions.

"In 1822," writes Mr. Livingston, "a person named Lechler was executed at Lancaster, in Pennsylvania, for an atrocious murder. The execution was, as usual, witnessed by an immense multitude. The effect produced, appears from a published account, the material facts in which were confirmed by unquestionable authority." The account proceeds to state, that "*twenty-eight* persons were committed to jail on Friday night, for divers offences, at Lancaster, such as MURDER, larceny, *assault and battery*, &c.; besides, many gentlemen lost their pocket books, though the pickpockets escaped, or the jail would have overflowed. In the evening, as one Thomas Burns, who was engaged as a weaver, in the factory, near Lancaster, was going home, he was met by one Wilson, with whom he had had some previous misunderstanding, when Wilson drew a knife, and gave him divers stabs, in sundry places, which are considered mortal. Wilson was apprehended and committed to jail, *and had the same irons put on him which had scarcely been laid off long enough by Lechler to get cold.*" It appeared that Wilson was one of the crowd, who left his residence expressly to witness the execution: and he was subsequently convicted of the murder.

Judge Hammond, of Otsego county, in the state of New York, gives an account of a case that occurred in that county, the substance of which is as follows: a man named Strang, had been convicted of a foul murder, committed on Cherry Hill, in Albany, by shooting, in cold blood, and for the vilest purposes, Mr. Whipple, an enterprising and worthy citizen. Levi Kelly,

a farmer, of the town of Otsego, between sixty and seventy miles from Albany, a man of respectable connections, and not noted for immorality of any kind, but known to possess very vindictive passions, went to Albany, for the sole purpose of seeing Strang executed. On his way home, and after his return, he seemed entirely engrossed by the execution he had witnessed. A man named Spafford lived in his house, with whom he had had some little difficulty. In less than a fortnight after Strang was executed, an altercation occurred between Kelly and Spafford, when Kelly seized a loaded gun and shot Spafford through the heart. For this offence he was tried, convicted, and executed. Here was a case, where the spectator hastened to commit the same offence, and *with the same kind of weapon*, for which he had just seen the terrible punishment of death inflicted. On the evening of the day on which Kelly was hanged, a man by the name of Cooke, who was present at the execution, committed suicide by hanging. Now, may not the public execution of Strang, instead of serving any salutary purpose as an example, to say nothing of the general evil consequences attendant upon it, be fairly presumed to have led to the destruction of three lives, besides his own?

But it is needless to multiply instances. The punishment of death is cruel and barbarous in itself, and brutalizing in its effects. It rouses the fierce and revengeful passions, it benumbs and paralyzes the sensibilities, and impairs that realizing sense of the sanctity of human life, which is so vitally important to the safety of society. How can it be expected that men, especially the depraved and corrupt, should individually regard that as sacred and inviolable, which society, collectively, makes no scruple, deliberately, remorselessly, without any pending necessity, to desecrate and destroy?

The baneful effects of public executions are not now generally denied. Indeed, so strong is the conviction of this fact, upon the public mind, that, in several of the states, executions are by law required to take place *in private*, in the presence of a few witnesses only. This concession to the demands of public opinion amounts, it is conceived, to a virtual abandonment of the argument that capital punishment is calculated to deter from the commission of crime. If it be in fact suited to produce that effect, it must be by presenting to the minds of men

the terrible consequences attendant upon crime. And how otherwise can that be done so effectually, with so impressive a sense of reality, as by exhibiting those consequences in an actual and sensible form, to the gaze of the beholder? But if such a spectacle, publicly displayed, be confessedly productive of evil, certainly the most that can be expected from the performance of the same deed, in comparative privacy, is that those evil consequences should be somewhat diminished, not that they should be transformed into positive good. There is a gross inconsistency in expecting the example of such a spectacle to operate well, as it were at second hand, or by hearsay, when its direct and immediate operation is mischievous.

The opponents of capital punishment are sometimes charged with inconsistency in denouncing the punishment of death as needlessly cruel and severe, while they insist that imprisonment, which they propose as a substitute, will afford a more effectual protection to society. It may be remarked, by the way, that whether a given punishment be more or less severe than another, is, to some extent, a matter of opinion. But the grand fallacy of the objection, lies in assuming, that because a punishment is claimed to be more effectual, it must therefore, of necessity be more severe. Whereas, so far is this from being the case, it is a known and admitted fact, that punishments may, by their very severity, be rendered wholly impotent. The principle advanced by Beccaria, and now universally conceded to be correct, is, that "crimes are more effectually prevented by the *certainty* than the *severity* of punishment."

"If it were possible," says Sir Samuel Romilly, a profound lawyer, and a sterling philanthropist, "that punishment, as the consequence of guilt, could be reduced to an absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime, except those which arise from sudden gusts of ungovernable passion. If the restoration of the property stolen, and only a few weeks, or even a few days imprisonment, were the *unavoidable* consequence of theft, no theft would ever be committed. No man would steal what he was sure he could not keep; no man would, by a voluntary act, deprive himself of his liberty, though but for a few days. It is the desire of a supposed good, which is the incentive to every crime. No crimes therefore, could exist, if it were infallibly

certain that not good, but evil, must follow, as an unavoidable consequence to the person who committed it."

Now, no case can be conceived, in which the evil and inconvenience resulting from perpetual imprisonment, would not incomparably transcend any possible advantage that could be anticipated from the commission of any crime. So far, therefore, as the calculation of consequences can have influence,—and it is only upon the supposition of such calculation that any punishment whatever can be of avail,—perpetual imprisonment is abundantly sufficient to deter from any imaginable offence.

But the consideration which should render the punishment of imprisonment more effectual than that of death, as a preventive of crime, is found in the greatly increased probability that it must be actually encountered. It is an undeniable fact, that there exists in the community, to a very great extent, an unconquerable repugnance to the infliction of death upon a fellow man. It matters not that some may be pleased to characterize this feeling as a sickly sentimentalism. The feeling exists; there stands the stubborn fact, and it is not in the power of man to change it. There are few who are not sincerely desirous that society, and the rights of its individual members, should be adequately protected, by the use of all reasonable and necessary means. But there are multitudes who earnestly and solemnly deprecate the taking of life, as a punishment, believing it, to say the least, to be as unnecessary as it is barbarous and inhuman. It is with extreme reluctance that courts and juries and witnesses come to the trial of a case which involves the life of a fellow man. It is an office rendered doubly unwelcome by the particular consideration of the consequences that may depend upon the result. True, they may be told, they have nothing to do with consequences. But it will not do,—it is not in human nature to overlook a consideration so momentous.

The difficulty here alluded to exists; it has long existed and been felt. In 1842 the Hon. J. T. Austin, then attorney general of the Commonwealth, in his annual report to the Legislature, remarked, "It does not belong to me to enter upon an argument that is nearly exhausted; but I deem it within my province in this connection, respectfully to submit to the Legislature an humble opinion, that, in the present state of society, it is no

longer an abstract question whether capital punishment is right, but whether it be practicable, and that there is good reason to believe that punishment for crime would more certainly follow the commission, if the Legislature should further abrogate the penalty of death. As the law now stands in this respect, its efficiency is mostly in its threatenings; but the terror of a trial is diminishing, and the culprit finds his impunity in the severity which it denounces."

Men who are tempted to commit heinous crimes, are perfectly cognizant of the state of feeling in the community. So far as they act deliberately and upon calculation, they may be presumed to take this circumstance into the account; a circumstance which really forms a very material element in calculating the chances of escape, though possibly they may allow it greater weight than the result will justify.

But were the punishment, in case of conviction, perpetual imprisonment, no such reluctance to act, from apprehension of consequences, would exist; and the man who meditated the commission of crime could indulge in no hope of impunity from that source. Not that such punishment would be regarded as a light matter. But there is this all important difference between imprisonment and death, considered as punishments. In the case of the latter, a mistake is and must of necessity be felt to be utterly *irremediable*, involving consequences to the accused, which, so far as is or can be known, may be of eternal duration. Whereas, in the former case, if by any mischance an innocent man should be convicted, there is the reflection that he still lives, not wholly cut off from the means of human culture, and in a condition, should his right to liberty ever be established, to be restored, in some imperfect measure, to the privileges and enjoyments of social life. This is a consideration suited, not indeed to induce judicial tribunals to convict on insufficient evidence, but to enable them to act, freely, fearlessly, without that nervous apprehension, which in the other case is inevitable.

Capital punishment, as a means to deter from crime, is fatally defective, from its inaptitude to produce any practical operative effect, at the moment when the restraint is needed, and when alone it can be of any avail. "Men do not in general," it has been said, "commit great crimes deliberately, but rather in a sudden gust of passion; and they commonly look on the pun-

ishment due to a great crime, as remote and improbable." The commission of a crime under the influence of fierce and uncontrolled passion, or of a morbid feeling, presupposes a state of mind as incapable as it is indisposed to weigh prudential considerations.

But suppose an individual, if such a case can be supposed, in the full possession of his senses and control of his passions, to sit down, beforehand, to a deliberate calculation of the consequences of a meditated crime. In the first place, such a man never calculates on being punished at all for the deed, should he commit it. He confidently expects to escape with impunity. His good name, his standing in society, he trusts, will shield him effectually against all suspicion. Or, if wanting in that safeguard, he will contrive and execute his plot with such rare art and circumspection as to afford no clue for detection. Or if, unluckily, suspicion should fasten upon him, and he should be actually arrested upon the charge, he shall still, by the efforts of able counsel, the difficulty of proving his guilt, the known general repugnance of the community to the infliction of death, the leaning of courts and juries and witnesses, to the side of mercy, or the strict technicalities of law, be able, albeit with a damaged reputation, at least to escape an actual conviction. Or even if convicted, he shall then be able to raise such reasonable doubts of his guilt, or to show such mitigating circumstances, as to move the executive clemency, in deference to the presumed popular wish, to spare the infliction of the extreme penalty. Taking into view the well known fact of the facility with which men bring themselves to believe that will happen, which they desire should happen, it is no matter of surprise, that the catastrophe of an ignominious death, as the punishment of a contemplated crime, should seem so improbable as to produce practically very little restraining effect.

But, say the advocates of capital punishment, go to the prisons, and ask the wretched convicts there under sentence of death, whether they would not joyfully accept a reprieve from that doom, though at the expense of perpetual imprisonment. At that stage, ordinarily, it would be so, though not universally even then. But that is little to the purpose. It matters little what one might prefer, when the deed has been done; when he has been detected, arrested, tried, convicted and condemned;

when delusion has been dispelled and passion has subsided; when, one after another, every resource has failed; when his proud spirit has been broken and remorse is gnawing his soul. The material inquiry is, What will serve as the most effectual restraint *before the crime has been committed.* Then these consequences, which become so terrible in the actual experience, are too often thought of, if at all, but to be contemned. The fury of passion, the reckless, heaven-defiant spirit, brooks no restraint, and scorns prudential considerations. In such a temper, with the desperation by which such deeds are commonly characterized, and the fatalist notions that so much prevail among those who are abandoned enough deliberately to perpetrate atrocious crimes, it is hazarding little to assert, that then, *in the decisive moment*, when the horrid purpose is ready to precipitate itself in the more horrid act, death would be regarded by many, if not by most, as preferable to a lingering life of ignominious imprisonment.

Men, it has been remarked, regulate their conduct by the repeated impressions of evils they know, and not by those with which they are unacquainted. The dread which a given punishment is likely to produce is, to a certain extent, comparative, depending much upon the character of other punishments in vogue in the same community. The views and feelings of a people adapt themselves to the existing state of things. "In proportion as punishments become more cruel, the minds of men, as a fluid rises to the same height with that which surrounds it, grow hardened and insensible," so that in point of efficacy, nothing is gained by such a change, but much is lost. Whilst the law regards the substitution of perpetual imprisonment as a merciful commutation of the penalty of death, the public may generally consider it in the same light; and, from its *secondary* position in the scale of punishments, its influence, in that respect, on the fears and imaginations of men, will be greatly weakened. But were the punishment of death utterly abolished, and perpetual imprisonment placed before the community as the highest and worst punishment known to the law, there is reason to believe it would strike a greater real terror, and operate as a more powerful preventive restraint than does now the punishment of death.

"Opinion is omnipotent." "It is not," says Sir William

Grant, an eminent English judge, "by the fear of death, but by exciting in the community a sentiment of horror against any particular act, that we can hope to deter offenders from committing it." If people would really be understood to entertain that respect for human life, that holy horror at its violent extinction, to which they pretend, let them abandon a practice which so unequivocally brands their professions with insincerity. Let them by their acts, not less than by their words, hold up the voluntary destruction of life, to the detestation of mankind, and they will have done more to discountenance personal violence, than they could accomplish by any amount of sanguinary punishment.

The same public opinion gives efficacy and sanction to punishment. If the punishment be such as commends itself to the universal sentiment as reasonable and humane, it will command the whole moral power of the community in its favor. If it be deemed by some to be revengeful and cruel, it will excite disgust, indignation or pity, thereby greatly impairing its moral force. We are told by Mr. Laing, in his "Residence in Norway," that "*loss of honor* has been, from the earliest times, a specified effective punishment in the criminal law of Norway, standing next in degree to loss of life." And he adds, "The exclusion from these offices and functions," (devolving on the people under the superintendence of the legal authorities,) "which, of course, the legal sentence of loss of honor produces, is a punishment so severely felt, that there are instances of culprits, after that portion of their punishment, consisting of slavery for a certain period, had been completed, returning to their chains, committing, on purpose, some petty offence, rather than live as outcasts under the sentence of dishonor among their former friends."

The practice of capital punishment is upheld in the community by a spirit of vengeance. In certain cases, we constantly hear the remark, that the criminal deserves to be hanged; that hanging is too good for him; and other expressions, less measured, but of like import. Suppose it were so in fact. Has civil society been constituted to administer retributive justice, according to moral deserts? and is not its office, in that respect, limited to its own reasonable protection? "Is it," asks Mr. Dymond, "the reasonable or decent office of one candidate for

the mercy of God, to hang his fellow candidate upon a gibbet?" Does that comport with the spirit of our Saviour who, in the case of one convicted of a crime, punishable, by the Jewish law, with death, said to those present, "He that is without sin among you, let him first cast a stone."

Mr. Livingston says he had once a conversation with an exalted magistrate, a man of high attainments and great liberality, on the abolition of this punishment. He acceded to the propriety of the measure in all cases but murder; that he excepted, because of the difficulty of keeping the offender, and the severity of solitary confinement, which was proposed to be substituted. But when these two objections were satisfactorily answered, he replied by one of the exclamations often used, and added very frankly, "I must confess that there is some little feeling of *revenge* at the bottom of my opinion on this subject." If all other reasoners were equally candid, there would be less difficulty in establishing true doctrines.

There are several specific objections to capital punishment, which deserve to be noticed. One is, the danger that persons really innocent will be convicted and executed,—murdered, that is, under the forms of law. Nor is this an imaginary or a trifling objection, in view of the existing course of judicial procedure; the liability to misconstruction of the law on the part of courts, and to mistake or perjury on the part of witnesses; the liability to be circumvented and ensnared by a chain of circumstantial evidence, artfully and wickedly woven; and the inability to rebut, by proof, circumstances which seem to have arranged themselves as if to compass the destruction of the accused. So deeply impressed with the danger from this source was the illustrious Lafayette, that he emphatically declared, in the French Chamber of Deputies, in 1830: "Till the infallibility of human judgments shall have been proved to me, I will persist in demanding the abolition of the punishment of death." Cases of the execution of persons innocent of the crimes for which they have suffered, are by no means of so rare occurrence as may be imagined. "Upwards of a hundred such cases," says Mr. O'Sullivan, "are known in the history of the English criminal jurisprudence." How many more there may have been, of a similar description, which never have and never may come to light on earth, no mortal can tell.

Another objection to capital punishment is found in the danger that persons may be executed as criminals, for acts committed under some maniacal delusion, or mental disorder, rendering them in fact morally irresponsible. The plea of insanity has always been, and still is, an odious one, often treated with ridicule and scorn. Yet, with the light which the improved though still imperfect knowledge of the medical jurisprudence of insanity has thrown upon the subject, there can be no doubt that, in numerous instances, individuals have been put to death as criminals, who were absolved from criminal responsibility by reason of insanity, and were entitled to the remedial care instead of the vengeance of society.

Still another objection, and one of overwhelming weight, against capital punishment, grows out of the nature of the punishment, as putting a violent, an untimely and unnatural end to the mortal career of the criminal. "*He who shortens a human life*," says the illustrious philanthropist, Wilberforce, "*puts in jeopardy a human soul.*" If, as is often said, the hardened and bloodstained criminal is not fit to *live*, how can it be expected that he should be fit to *die?*

"To see a man cut off by the sentence of the law," says an author, "with all his transgressions on his head, ending his life in reckless blasphemy, in stupid insensibility, in hopeless despair, or under the influence of that too often deceptive repentance, which is the mere offspring of terror, and which we may learn to appreciate at its just value, by a reference to the after life of most of the criminals who unexpectedly receive a pardon, is indeed too tremendous a spectacle to be witnessed or reflected upon, without the deepest emotion."

"Let all those," says a writer in the Pamphleteer, "who maintain that life is but a trial for eternity,—that its few fleeting moments are destined to decide the fate of numberless ages, —that as man dies, so he remains *forever*, tortured with anguish and polluted with guilt, or blooming in unfading joy and exalted goodness,—let those pause and reflect on the consequences of the irrevocable sentence. Let them image, if they dare image to themselves, the horrors, unspeakable in their intenseness, as they are lasting in their duration, which await the guilty in a world of unchanging realities. One single stroke of mortal vengeance has closed the account of the accusing angel,—has

set a dreadful period to the little space of trial,—has hurled a fellow creature, yet covered with unrepented crimes, to that bar from whence there is no appeal; and has, perhaps, fixed him in guilt and despair as long as the throne of the Almighty endures. Had he lived, whom the hand of justice hurled to unfathomable ruin, he might have become an heir of immortal purity, and crowned with unfading bliss. He might have stood triumphant on the tomb of nature, and proceeded advancing in goodness and joy, delighted with the smiles of an Almighty Father. The very imagination of the ruin they have accelerated, makes the advocate of death tremble; while it should compel all who believe in a doctrine so terrible, to deny that a power so tremendous is committed to fallible man, however exalted by fortune or by goodness. There is a voice from the tomb which cries to him to spare, who must one day himself be tried at a great and majestic tribunal."

There is a disposition to undervalue the criminal, to hustle him out of the way as speedily as possible, as a vile and worthless thing. The minority of a committee, in a report made to the House of Representatives, a few years since, deprecating any change in the law, used the following language: "If but *one* more murder should be committed in course of a generation, and *one thousand convicted murderers* saved from the gallows in the same time, society would be the loser by the operation of this experiment." Such sentiments are probably not unusual. They may perhaps be deemed by some fitting to cherish, and becoming to express. But for fallible, short sighted mortals, to take it upon themselves magisterially to decide on the relative importance of the instruments employed to accomplish the purposes of God's providence, and even to set aside a portion of his creatures as utterly of no account, seems no better than impious presumption. Such things are beyond the grasp of human knowledge. But this we do know, that if the spirit of man be indeed immortal, and his condition in the future is to depend upon his character in the past, the soul even of the vilest criminal is of priceless value; and it ill becomes a fellow mortal to precipitate the destiny or peril the salvation of such a one, by a sudden, violent and unnatural foreclosure of his period of probation.

The objection to the taking of life, on the ground that it is a

thing admitting of no reparation, no restitution, is vainly attempted to be answered, by asserting that the same is true of every other good. Liberty, happiness, opportunities, may indeed be abridged or impaired, yet not utterly exhausted and annihilated. A portion of them may be lost, but the evil is only partial and temporary. There is still a residuum left, for hope and for fruition. But *life* is one and indivisible. Its destruction, when once accomplished, is utter and final.

It remains to show, that this proposed substitution of another punishment, instead of death, is no new, untried experiment. It is a thing which substantially has been subjected to the test of experience, and has been found to work successfully and beneficently. To that effect we have the experience of this State, in respect to certain crimes, formerly capital here, and the experience of other states and nations, in respect also to the particular crimes which with us are still punishable with death.

"Throughout all the better age of the Roman republic, for a period of about two centuries and a half, the infliction of the punishment of death upon a Roman citizen, for any cause whatever, was expressly forbidden by the famous Porcian law." 'In this period," says Blackstone, "the republic flourished; under the emperors, severe punishments were revived; *and then the empire fell.*"

The Empress Elizabeth, of Russia, more than a century ago, on ascending the throne, pledged herself never to inflict the punishment of death; and, throughout her reign of twenty years, she kept the noble pledge. And so satisfactory was found its operation, that her successor, the great Catherine, adopted it into her celebrated code of laws, with the exception of very rare cases of offences against the state. From that day to the present, it is said, there have been but two occasions on which the punishment of death has been inflicted in Russia: once under Catherine, on the person of a notorious brigand chief and rebel; and again at the commencement of the reign of the present Emperor Nicholas, on the suppression of a rebellion which broke out in the streets of the capital, and filled them with blood. Five of the leading nobles engaged in this insurrection, were put to death; rather as a political measure, than as one of ordinary social justice.

"The Count de Ségur, on his return from his embassy to St.

Petersburg, in a letter published in the *Moniteur*, in June, 1791, declared that Russia, under the operation of this law, was one of the countries in which the least number of murders was committed;—adding, that Catherine herself had several times said to him, '*We must punish crime without imitating it; the punishment of death is rarely anything but a useless barbarity.*' "

"Exile to Siberia," says Mr. O'Sullivan, "a far less severe doom than the proposed incarceration in the State prison for life, is the punishment which is found in Russia, a sufficient substitute for that of death. This is made either temporary or perpetual, accompanied with civil and political death, according to the degree of the crime."

In Tuscany, the Grand Duke Leopold, on ascending the throne, in 1765, abolished the punishment of death, provisionally. The success of the experiment may be learned from the solemn edict, issued by him twenty-one years afterwards, in 1786, in which, after expressing his satisfaction with the results of the experiment, as having, "instead of increasing the number of crimes, considerably diminished that of the smaller ones, and rendered those of an atrocious nature very rare," he proceeds to state various considerations, upon the strength of which he declares, "we have resolved to abolish, and by the present law do abolish, forever, the punishment of death."

In further testimony of the beneficent effects of this policy in Tuscany, we have this statement from Dr. Benjamin Rush. A gentleman who resided five years at Pisa, informed him that only *five* murders had been perpetrated in the dominions of the Grand Duke, in twenty years; that after his residence in Tuscany, he spent three months in Rome, where death was still the punishment of murder; and that during that short period *sixty* murders were committed in the precincts of the city. "It is remarkable," adds Dr. Rush, "the manners, principles and religion of the inhabitants of Tuscany and Rome are exactly the same."

The punishment of death was reëstablished in Tuscany, chiefly through the power of the absolute will of Bonaparte. His motive will be seen in what took place between himself and his brother Louis, as related by the latter. Napoleon had offered the sovereignty of Tuscany to Louis, who in a conference

between them made the inquiry, whether he would be permitted to govern the kingdom entirely after his own fashion, so far as it regarded the interior, provided he left the whole exterior relations to the emperor. The reply, in part, was, "The interest of France is the point to which every thing must tend: *codes*, taxes, conscriptions,—every thing in your kingdom must be to the profit of mine. *If I allowed you to make Tuscany happy and tranquil, all travellers from France would envy it.*"

During the seven years, from May 1804 to May, 1811, of the recordership of the distinguished Sir James Mackintosh, at Bombay, in India, whose jurisdiction extended over not less than two hundred thousand people, capital punishment was disused. In his parting charge to the grand jury, in reviewing the administration of the law during his presidency of the court, he instituted a comparison between the seven years of his official service, and a prior period of seven years, from 1756 to 1763,—the result of which he stated as follows: "if these circumstances be considered, it will appear that the capital crimes committed during the last seven years, *with no capital execution*, have, in proportion to the population, not been much more than *a third* of those committed in the first seven years, notwithstanding the infliction of death on *forty-seven* persons." "The intermediate periods," he added, "lead to the same results."

The abolition, either total or partial, of capital punishment, for a multitude of offences, in Great Britain, and the disuse of such punishment in Belgium, have been attended with the most salutary and gratifying results, as is shown by the statistics of crime in those countries.

We have evidence to the same purpose, from actual experience nearer home. In Pennsylvania, for more than half a century, only murder in the first degree has been punishable with death. In Ohio and New Hampshire, the law is the same. In Vermont and Maine, with fewer crimes nominally capital than with us, legal provisions exist which are considered to amount, substantially and practically, to a virtual abolition of the punishment of death. And, in Michigan, since 1846, the crime of murder is punishable only by imprisonment. Finally, in this Commonwealth, the punishment of death for the crimes of burglary and highway robbery was repealed in 1839.

The committee are not aware that the punishment of imprisonment, which in all these cases has superseded that of death, is regarded by the people of those several states otherwise than as satisfactory; or that there is any desire to return to the former mode; or any complaint that the mode now practised is less effectual to deter from crime. Reports are in circulation, from time to time, that the people of Michigan are dissatisfied with the change in that state, and are desirous to return to the former law. But from the most reliable information upon the subject, it is manifest that such is not the fact, but that, on the contrary, the change has operated successfully and beneficently, and so as to meet the decided approval of the people of the state. The following extracts, from a letter addressed by the secretary of state of Michigan, to a gentleman in Lowell, dated May 6, 1850, which has been published in some of the newspapers, would seem to place the matter beyond all doubt.

"I have no hesitation," he says, "in giving it as my opinion that the general sentiment of our state is beyond all question very nearly unanimous in favor of our present laws upon that subject. Indeed, in the whole range of my acquaintance, I do not know one individual in favor of a return to that practice. I am certain I have heard no one *express* himself in favor of such a change.

"I am not aware of there being any statistics on file in this office bearing upon this question. By coincidence merely, there were committed in Wayne county, within two years from the revision, *four* murders. The grand jury of that county memorialized the Legislature in favor of a repeal. Counter memorials showed most conclusively that the increase of capital crime, startling, indeed, as it was, could not have had any connection with the change in the law; as in three out of the four cases, certainly, the criminals knew not of the change. Since that time there certainly has been no increase of capital crime."

From a subsequent letter of the Secretary of State, to a Canadian gentleman, it appears that, during the year 1850, there were in Michigan, *no convictions for murder or manslaughter.*

Now, it is submitted, if imprisonment is found, by actual experiment, to be,—so far as any punishment may,—an adequate and effectual protection against certain crimes, in conterminous and neighboring states, the presumption is, that it will

be alike adequate, for the same crimes, in this State: and if it is found, in like manner, to be an adequate punishment for certain heinous crimes, the presumption is that it will also be adequate for other crimes, of the same general class. And it lies upon him, who would deny the inference intended to be deduced from these propositions, to show affirmatively, differences in the circumstances and state of society, in the one case, or in the nature of the crimes, in the other, sufficient to lead to a difference in results. The committee believe that neither of these can be shown. The idea, sometimes entertained, that the murderer, in point of depravity, stands wholly aloof and isolated from all other criminals, is entirely fanciful. Nobody can doubt that even he is actuated by motives, inducements, and considerations, similar in their nature, to those which prompt to other crimes; and that he is open to the operation of like influences with other men. Nay, it is past all question, that a deed which the law shall adjudge to be murder, may be committed with less of actual malignity than exists sometimes in the perpetration of minor offences, less, in fact, than may exist in cases, where no overt act is committed, and consequently no punishment is incurred.

Entertaining these views upon the subject, the committee are of opinion that the infliction of death as a punishment for crimes, is unnecessary, and that it ought to be dispensed with; and to that end they report the accompanying Bill.

For the Committee,

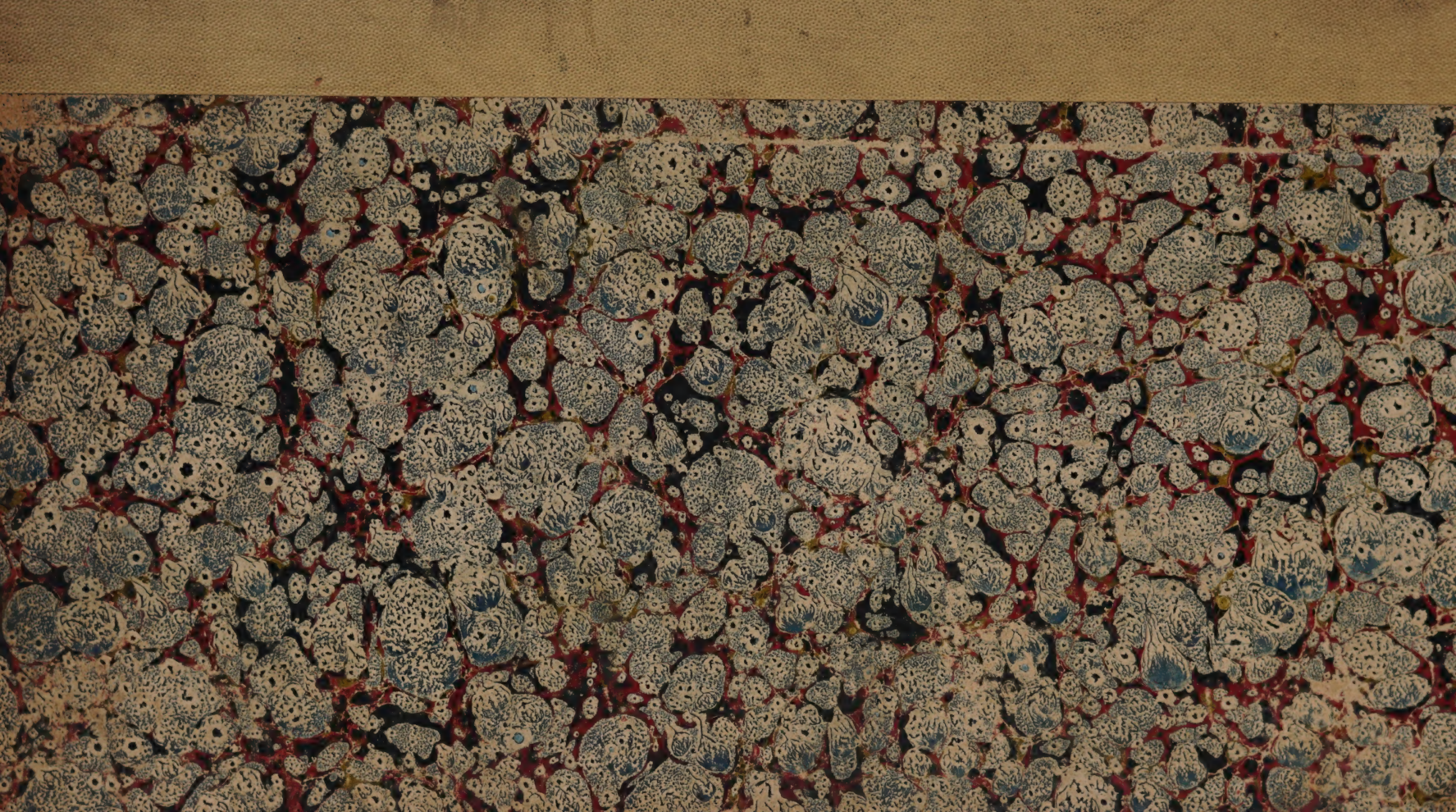
CHARLES MASON.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-One.

AN ACT

For the Punishment of Treason, Murder, Rape and Arson.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Any person who shall be convicted of either of the offences described in the second section of the one hundred and twenty-fourth chapter, or in the first section or the eighteenth section of the one hundred and twenty-fifth chapter, or in the first section of the one hundred and twenty-sixth chapter of the Revised Statutes, shall be punished by imprisonment in the State prison for life, instead of the punishment of death, as is provided in the said sections